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in opinion

December 13, 1957

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CONCORD, N.H.

Kenneth L. Cowan, Director
Division of Inheritance Taxes
State Tax Commission
Concord, New Hampshire

Dear Mr. Cowan:

In a letter of December 10, 1957, you cite facts as follows:

By her will a decedent bequeaths a nominal sum to her husband, the bulk of her estate to taxable legatees. The husband files the statutory waiver of the provisions of the will in his behalf. The taxable legatees have grounds to believe that the waiver might be declared ineffectual owing to the alleged existence of facts rendering operative the provisions of RSA 560:18 (Effect of Abandonment by Husband). In compromise the husband agrees that a part of his statutory share may be paid to the non-exempt takers.

In the circumstances you inquire concerning the taxability of the estate under the provisions of RSA 86 (Taxation of Legacies and Successions).

While the matter is of first impression with us, we are of opinion that the application of basic rules indicate the correct resolution of it. Upon the filing of the waiver, the husband became entitled as a matter of law to the share prescribed by statute. This share equaled a sum greatly in excess of the amount left him by the will. The effect was inevitably to reduce the amount passing to the taxable legatees. It is on the amount actually so passing to them that the tax ought to be assessed.

It is true that through the compromise agreement the taxable legatees will receive an amount additional to that going to them under the will as reduced through the operation of the statutory waiver. However, the additional amount will not have come to them as

C O P Y

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a result of any of the incidents listed in RSA 86:6; it will have been conveyed to them, rather, through the independent action of the husband after it had vested in him in a tax-free transfer.

Nothing herein is seen to be contrary to In Re Burtman, 95 N.H. 383. Indeed, the reasoning of that case, applied here, compels the conclusion which we express.

Very truly yours,

Warren E. Waters
Deputy Attorney General

WEW/aml